

SHB 1788 - S COMM AMD

By Committee on Government Operations & Elections

ADOPTED AS AMENDED 04/16/2003

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 39.10 RCW  
4 to read as follows:

5 (1) Public bodies may use a job order contract for public works  
6 projects when:

7 (a) A public body has made a determination that the use of job  
8 order contracts will benefit the public by providing an effective means  
9 of reducing the total lead-time and cost for public works projects or  
10 repair required at public facilities through the use of unit price  
11 books and work orders by eliminating time-consuming, costly aspects of  
12 the traditional public works process, which require separate  
13 contracting actions for each small project;

14 (b) The work order to be issued for a particular project does not  
15 exceed two hundred thousand dollars;

16 (c) Less than twenty percent of the dollar value of the work order  
17 consists of items of work not contained in the unit price book; and

18 (d) At least eighty percent of the job order contract must be  
19 subcontracted to entities other than the job order contractor.

20 (2) Public bodies shall award job order contracts through a  
21 competitive process utilizing public requests for proposals. Public  
22 bodies shall make an effort to solicit proposals from a certified  
23 minority or certified woman-owned contractor to the extent permitted by  
24 the Washington state civil rights act, RCW 49.60.400. The public body  
25 shall publish, at least once in a legal newspaper of general  
26 circulation published in or as near as possible to that part of the  
27 county in which the public works will be done, a request for proposals  
28 for job order contracts and the availability and location of the  
29 request for proposal documents. The public body shall ensure that the  
30 request for proposal documents at a minimum includes:

1 (a) A detailed description of the scope of the job order contract  
2 including performance, technical requirements and specifications,  
3 functional and operational elements, minimum and maximum work order  
4 amounts, duration of the contract, and options to extend the job order  
5 contract;

6 (b) The reasons for using job order contracts;

7 (c) A description of the qualifications required of the proposer;

8 (d) The identity of the specific unit price book to be used;

9 (e) The minimum contracted amount committed to the selected job  
10 order contractor;

11 (f) A description of the process the public body will use to  
12 evaluate qualifications and proposals, including evaluation factors and  
13 the relative weight of factors. The public body shall ensure that  
14 evaluation factors include, but are not limited to, proposal price and  
15 the ability of the proposer to perform the job order contract. In  
16 evaluating the ability of the proposer to perform the job order  
17 contract, the public body may consider: The ability of the  
18 professional personnel who will work on the job order contract; past  
19 performance on similar contracts; ability to meet time and budget  
20 requirements; ability to provide a performance and payment bond for the  
21 job order contract; recent, current, and projected work loads of the  
22 proposer; location; and the concept of the proposal;

23 (g) The form of the contract to be awarded;

24 (h) The method for pricing renewals of or extensions to the job  
25 order contract;

26 (i) A notice that the proposals are subject to the provisions of  
27 RCW 39.10.100; and

28 (j) Other information relevant to the project.

29 (3) A public body shall establish a committee to evaluate the  
30 proposals. After the committee has selected the most qualified  
31 finalists, the finalists shall submit final proposals, including sealed  
32 bids based upon the identified unit price book. Such bids may be in  
33 the form of coefficient markups from listed price book costs. The  
34 public body shall award the contract to the firm submitting the highest  
35 scored final proposal using the evaluation factors and the relative  
36 weight of factors published in the public request for proposals.

1 (4) The public body shall provide a protest period of at least ten  
2 business days following the day of the announcement of the apparent  
3 successful proposal to allow a protester to file a detailed statement  
4 of the grounds of the protest. The public body shall promptly make a  
5 determination on the merits of the protest and provide to all proposers  
6 a written decision of denial or acceptance of the protest. The public  
7 body shall not execute the contract until two business days following  
8 the public body's decision on the protest.

9 (5) The public body shall issue no work orders until it has  
10 approved, in consultation with the office of minority and women's  
11 business enterprises or the equivalent local agency, a plan prepared by  
12 the job order contractor that equitably spreads certified women and  
13 minority business enterprise subcontracting opportunities, to the  
14 extent permitted by the Washington state civil rights act, RCW  
15 49.60.400, among the various subcontract disciplines.

16 (6) Job order contracts may be executed for an initial contract  
17 term of not to exceed two years, with the option of extending or  
18 renewing the job order contract for one year. All extensions or  
19 renewals must be priced as provided in the request for proposals. The  
20 extension or renewal must be mutually agreed to by the public body and  
21 the job order contractor.

22 (7) The maximum total dollar amount that may be awarded under a job  
23 order contract shall not exceed three million dollars in the first year  
24 of the job order contract, five million dollars over the first two  
25 years of the job order contract, and, if extended or renewed, eight  
26 million dollars over the three years of the job order contract.

27 (8) For each job order contract, public bodies shall not issue more  
28 than two work orders equal to or greater than one hundred fifty  
29 thousand dollars in a twelve-month contract performance period.

30 (9) All work orders issued for the same project shall be treated as  
31 a single work order for purposes of the one hundred fifty thousand  
32 dollar limit on work orders in subsection (8) of this section and the  
33 two hundred thousand dollar limit on work orders in subsection (1)(b)  
34 of this section.

35 (10) Any new permanent, enclosed building space constructed under  
36 a work order shall not exceed two thousand gross square feet.

1 (11) Each public body may have no more than two job order contracts  
2 in effect at any one time.

3 (12) For purposes of chapters 39.08, 39.76, and 60.28 RCW, each  
4 work order issued shall be treated as a separate contract.

5 (13) The requirements of RCW 39.30.060 do not apply to requests for  
6 proposals for job order contracts.

7 (14) Job order contractors shall pay prevailing wages for all work  
8 that would otherwise be subject to the requirements of chapter 39.12  
9 RCW. Prevailing wages for a job order contract must be determined as  
10 of the time of the execution of the job order contract and any  
11 extension or renewal.

12 (15) If, in the initial contract term, the public body, at no fault  
13 of the job order contractor, fails to issue the minimum amount of work  
14 orders stated in the public request for proposals, the public body  
15 shall pay the contractor an amount equal to the difference between the  
16 minimum work order amount and the actual total of the work orders  
17 issued multiplied by an appropriate percentage for overhead and profit  
18 contained in the general conditions for Washington state facility  
19 construction. This will be the contractor's sole remedy.

20 (16) All job order contracts awarded under this section must be  
21 executed before July 1, 2007, however the job order contract may be  
22 extended or renewed as provided for in this section.

23 (17) For purposes of this section, "public body" includes any  
24 school district.

25 **Sec. 2.** RCW 39.10.020 and 2001 c 328 s 1 are each amended to read  
26 as follows:

27 Unless the context clearly requires otherwise, the definitions in  
28 this section apply throughout this chapter.

29 (1) "Alternative public works contracting procedure" means the  
30 design-build and the general contractor/construction manager  
31 contracting procedures authorized in RCW 39.10.051 and 39.10.061,  
32 respectively.

33 (2) "Public body" means the state department of general  
34 administration; the University of Washington; Washington State  
35 University; every city with a population greater than seventy thousand  
36 and any public authority chartered by such city under RCW 35.21.730

1 through 35.21.755 and specifically authorized as provided in RCW  
2 39.10.120(4); every county with a population greater than four hundred  
3 fifty thousand; every port district with total revenues greater than  
4 fifteen million dollars per year; every public utility district with  
5 revenues from energy sales greater than twenty-three million dollars  
6 per year; and those school districts proposing projects that are  
7 considered and approved by the school district project review board  
8 under RCW 39.10.115.

9 (3) "Public works project" means any work for a public body within  
10 the definition of the term public work in RCW 39.04.010.

11 (4) "Job order contract" means a contract between a public body or  
12 any school district and a registered or licensed contractor in which  
13 the contractor agrees to a fixed period, indefinite quantity delivery  
14 order contract which provides for the use of negotiated, definitive  
15 work orders for public works as defined in RCW 39.04.010.

16 (5) "Job order contractor" means a registered or licensed  
17 contractor awarded a job order contract.

18 (6) "Unit price book" means a book containing specific prices,  
19 based on generally accepted industry standards and information, where  
20 available, for various items of work to be performed by the job order  
21 contractor. The prices may include: All the costs of materials;  
22 labor; equipment; overhead, including bonding costs; and profit for  
23 performing the items of work.

24 (7) "Work order" means an order issued for a definite scope of work  
25 to be performed pursuant to a job order contract.

26 **Sec. 3.** RCW 39.08.030 and 1989 c 58 s 1 are each amended to read  
27 as follows:

28 (1) The bond mentioned in RCW 39.08.010 shall be in an amount equal  
29 to the full contract price agreed to be paid for such work or  
30 improvement, except under subsection (2) of this section, and shall be  
31 to the state of Washington, except as otherwise provided in RCW  
32 39.08.100, and except in cases of cities and towns, in which cases such  
33 municipalities may by general ordinance fix and determine the amount of  
34 such bond and to whom such bond shall run: PROVIDED, The same shall  
35 not be for a less amount than twenty-five percent of the contract price  
36 of any such improvement, and may designate that the same shall be

1 payable to such city, and not to the state of Washington, and all such  
2 persons mentioned in RCW 39.08.010 shall have a right of action in his,  
3 her, or their own name or names on such bond for work done by such  
4 laborers or mechanics, and for materials furnished or provisions and  
5 goods supplied and furnished in the prosecution of such work, or the  
6 making of such improvements: PROVIDED, That such persons shall not  
7 have any right of action on such bond for any sum whatever, unless  
8 within thirty days from and after the completion of the contract with  
9 an acceptance of the work by the affirmative action of the board,  
10 council, commission, trustees, officer, or body acting for the state,  
11 county or municipality, or other public body, city, town or district,  
12 the laborer, mechanic or subcontractor, or materialman, or person  
13 claiming to have supplied materials, provisions or goods for the  
14 prosecution of such work, or the making of such improvement, shall  
15 present to and file with such board, council, commission, trustees or  
16 body acting for the state, county or municipality, or other public  
17 body, city, town or district, a notice in writing in substance as  
18 follows:

19 To (here insert the name of the state, county or  
20 municipality or other public body, city, town or district):

21 Notice is hereby given that the undersigned (here  
22 insert the name of the laborer, mechanic or subcontractor,  
23 or materialman, or person claiming to have furnished  
24 labor, materials or provisions for or upon such contract or  
25 work) has a claim in the sum of . . . . . dollars (here insert  
26 the amount) against the bond taken from . . . . . (here  
27 insert the name of the principal and surety or sureties upon  
28 such bond) for the work of . . . . . (here insert a brief  
29 mention or description of the work concerning which said  
30 bond was taken).

31 (here to be signed) .....

32 Such notice shall be signed by the person or corporation making the  
33 claim or giving the notice, and said notice, after being presented and  
34 filed, shall be a public record open to inspection by any person, and  
35 in any suit or action brought against such surety or sureties by any  
36 such person or corporation to recover for any of the items hereinbefore

1 specified, the claimant shall be entitled to recover in addition to all  
2 other costs, attorney's fees in such sum as the court shall adjudge  
3 reasonable: PROVIDED, HOWEVER, That no attorney's fees shall be  
4 allowed in any suit or action brought or instituted before the  
5 expiration of thirty days following the date of filing of the notice  
6 hereinbefore mentioned: PROVIDED FURTHER, That any city may avail  
7 itself of the provisions of RCW 39.08.010 through 39.08.030,  
8 notwithstanding any charter provisions in conflict herewith: AND  
9 PROVIDED FURTHER, That any city or town may impose any other or further  
10 conditions and obligations in such bond as may be deemed necessary for  
11 its proper protection in the fulfillment of the terms of the contract  
12 secured thereby, and not in conflict herewith.

13 (2) Under the job order contracting procedure described in section  
14 1 of this act, bonds will be in an amount not less than the dollar  
15 value of all open work orders.

16 **Sec. 4.** RCW 39.30.060 and 2002 c 163 s 2 are each amended to read  
17 as follows:

18 (1) Every invitation to bid on a prime contract that is expected to  
19 cost one million dollars or more for the construction, alteration, or  
20 repair of any public building or public work of the state or a state  
21 agency or municipality as defined under RCW 39.04.010 or an institution  
22 of higher education as defined under RCW 28B.10.016 shall require each  
23 prime contract bidder to submit as part of the bid, or within one hour  
24 after the published bid submittal time, the names of the subcontractors  
25 with whom the bidder, if awarded the contract, will subcontract for  
26 performance of the work of: HVAC (heating, ventilation, and air  
27 conditioning); plumbing as described in chapter 18.106 RCW; and  
28 electrical as described in chapter 19.28 RCW, or to name itself for the  
29 work. The prime contract bidder shall not list more than one  
30 subcontractor for each category of work identified, unless  
31 subcontractors vary with bid alternates, in which case the prime  
32 contract bidder must indicate which subcontractor will be used for  
33 which alternate. Failure of the prime contract bidder to submit as  
34 part of the bid the names of such subcontractors or to name itself to  
35 perform such work or the naming of two or more subcontractors to

1 perform the same work shall render the prime contract bidder's bid  
2 nonresponsive and, therefore, void.

3 (2) Substitution of a listed subcontractor in furtherance of bid  
4 shopping or bid peddling before or after the award of the prime  
5 contract is prohibited and the originally listed subcontractor is  
6 entitled to recover monetary damages from the prime contract bidder who  
7 executed a contract with the public entity and the substituted  
8 subcontractor but not from the public entity inviting the bid. It is  
9 the original subcontractor's burden to prove by a preponderance of the  
10 evidence that bid shopping or bid peddling occurred. Substitution of  
11 a listed subcontractor may be made by the prime contractor for the  
12 following reasons:

13 (a) Refusal of the listed subcontractor to sign a contract with the  
14 prime contractor;

15 (b) Bankruptcy or insolvency of the listed subcontractor;

16 (c) Inability of the listed subcontractor to perform the  
17 requirements of the proposed contract or the project;

18 (d) Inability of the listed subcontractor to obtain the necessary  
19 license, bonding, insurance, or other statutory requirements to perform  
20 the work detailed in the contract; or

21 (e) The listed subcontractor is barred from participating in the  
22 project as a result of a court order or summary judgment.

23 (3) The requirement of this section to name the prime contract  
24 bidder's proposed HVAC, plumbing, and electrical subcontractors applies  
25 only to proposed HVAC, plumbing, and electrical subcontractors who will  
26 contract directly with the prime contract bidder submitting the bid to  
27 the public entity.

28 (4) This section does not apply to job order contract requests for  
29 proposals under section 1 of this act.

30 NEW SECTION. Sec. 5. A new section is added to chapter 39.12 RCW  
31 to read as follows:

32 Job order contracts under section 1 of this act must pay prevailing  
33 wages for all work that would otherwise be subject to the requirements  
34 of this chapter. Prevailing wages for a job order contract must be  
35 determined as of the time the job order contract and any extension or  
36 renewal is executed.

1       **Sec. 6.** RCW 60.28.011 and 2000 c 185 s 1 are each amended to read  
2 as follows:

3       (1) Public improvement contracts shall provide, and public bodies  
4 shall reserve, a contract retainage not to exceed five percent of the  
5 moneys earned by the contractor as a trust fund for the protection and  
6 payment of: (a) The claims of any person arising under the contract;  
7 and (b) the state with respect to taxes imposed pursuant to Title 82  
8 RCW which may be due from such contractor.

9       (2) Every person performing labor or furnishing supplies toward the  
10 completion of a public improvement contract shall have a lien upon  
11 moneys reserved by a public body under the provisions of a public  
12 improvement contract. However, the notice of the lien of the claimant  
13 shall be given within forty-five days of completion of the contract  
14 work, and in the manner provided in RCW 39.08.030.

15       (3) The contractor at any time may request the contract retainage  
16 be reduced to one hundred percent of the value of the work remaining on  
17 the project.

18       (a) After completion of all contract work other than landscaping,  
19 the contractor may request that the public body release and pay in full  
20 the amounts retained during the performance of the contract, and sixty  
21 days thereafter the public body must release and pay in full the  
22 amounts retained (other than continuing retention of five percent of  
23 the moneys earned for landscaping) subject to the provisions of  
24 chapters 39.12 and 60.28 RCW.

25       (b) Sixty days after completion of all contract work the public  
26 body must release and pay in full the amounts retained during the  
27 performance of the contract subject to the provisions of chapters 39.12  
28 and 60.28 RCW.

29       (4) The moneys reserved by a public body under the provisions of a  
30 public improvement contract, at the option of the contractor, shall be:

31       (a) Retained in a fund by the public body;

32       (b) Deposited by the public body in an interest bearing account in  
33 a bank, mutual savings bank, or savings and loan association. Interest  
34 on moneys reserved by a public body under the provision of a public  
35 improvement contract shall be paid to the contractor;

36       (c) Placed in escrow with a bank or trust company by the public  
37 body. When the moneys reserved are placed in escrow, the public body

1 shall issue a check representing the sum of the moneys reserved payable  
2 to the bank or trust company and the contractor jointly. This check  
3 shall be converted into bonds and securities chosen by the contractor  
4 and approved by the public body and the bonds and securities shall be  
5 held in escrow. Interest on the bonds and securities shall be paid to  
6 the contractor as the interest accrues.

7 (5) The contractor or subcontractor may withhold payment of not  
8 more than five percent from the moneys earned by any subcontractor or  
9 sub-subcontractor or supplier contracted with by the contractor to  
10 provide labor, materials, or equipment to the public project. Whenever  
11 the contractor or subcontractor reserves funds earned by a  
12 subcontractor or sub-subcontractor or supplier, the contractor or  
13 subcontractor shall pay interest to the subcontractor or sub-  
14 subcontractor or supplier at a rate equal to that received by the  
15 contractor or subcontractor from reserved funds.

16 (6) A contractor may submit a bond for all or any portion of the  
17 contract retainage in a form acceptable to the public body and from a  
18 bonding company meeting standards established by the public body. The  
19 public body shall accept a bond meeting these requirements unless the  
20 public body can demonstrate good cause for refusing to accept it. This  
21 bond and any proceeds therefrom are subject to all claims and liens and  
22 in the same manner and priority as set forth for retained percentages  
23 in this chapter. The public body shall release the bonded portion of  
24 the retained funds to the contractor within thirty days of accepting  
25 the bond from the contractor. Whenever a public body accepts a bond in  
26 lieu of retained funds from a contractor, the contractor shall accept  
27 like bonds from any subcontractors or suppliers from which the  
28 contractor has retained funds. The contractor shall then release the  
29 funds retained from the subcontractor or supplier to the subcontractor  
30 or supplier within thirty days of accepting the bond from the  
31 subcontractor or supplier.

32 (7) If the public body administering a contract, after a  
33 substantial portion of the work has been completed, finds that an  
34 unreasonable delay will occur in the completion of the remaining  
35 portion of the contract for any reason not the result of a breach  
36 thereof, it may, if the contractor agrees, delete from the contract the  
37 remaining work and accept as final the improvement at the stage of

1 completion then attained and make payment in proportion to the amount  
2 of the work accomplished and in this case any amounts retained and  
3 accumulated under this section shall be held for a period of sixty days  
4 following the completion. In the event that the work is terminated  
5 before final completion as provided in this section, the public body  
6 may thereafter enter into a new contract with the same contractor to  
7 perform the remaining work or improvement for an amount equal to or  
8 less than the cost of the remaining work as was provided for in the  
9 original contract without advertisement or bid. The provisions of this  
10 chapter are exclusive and shall supersede all provisions and  
11 regulations in conflict herewith.

12 (8) Whenever the department of transportation has contracted for  
13 the construction of two or more ferry vessels, sixty days after  
14 completion of all contract work on each ferry vessel, the department  
15 must release and pay in full the amounts retained in connection with  
16 the construction of the vessel subject to the provisions of RCW  
17 60.28.020 and chapter 39.12 RCW. However, the department of  
18 transportation may at its discretion condition the release of funds  
19 retained in connection with the completed ferry upon the contractor  
20 delivering a good and sufficient bond with two or more sureties, or  
21 with a surety company, in the amount of the retained funds to be  
22 released to the contractor, conditioned that no taxes shall be  
23 certified or claims filed for work on the ferry after a period of sixty  
24 days following completion of the ferry; and if taxes are certified or  
25 claims filed, recovery may be had on the bond by the department of  
26 revenue and the materialmen and laborers filing claims.

27 (9) Except as provided in subsection (1) of this section,  
28 reservation by a public body for any purpose from the moneys earned by  
29 a contractor by fulfilling its responsibilities under public  
30 improvement contracts is prohibited.

31 (10) Contracts on projects funded in whole or in part by farmers  
32 home administration and subject to farmers home administration  
33 regulations are not subject to subsections (1) through (9) of this  
34 section.

35 (11) This subsection applies only to a public body that has  
36 contracted for the construction of a facility using the general  
37 contractor/construction manager procedure, as defined under RCW

1 ((~~39.10.060~~)) 39.10.061. If the work performed by a subcontractor on  
2 the project has been completed within the first half of the time  
3 provided in the general contractor/construction manager contract for  
4 completing the work, the public body may accept the completion of the  
5 subcontract. The public body must give public notice of this  
6 acceptance. After a forty-five day period for giving notice of liens,  
7 and compliance with the retainage release procedures in RCW 60.28.021,  
8 the public body may release that portion of the retained funds  
9 associated with the subcontract. Claims against the retained funds  
10 after the forty-five day period are not valid.

11 (12) Unless the context clearly requires otherwise, the definitions  
12 in this subsection apply throughout this section.

13 (a) "Contract retainage" means an amount reserved by a public body  
14 from the moneys earned by a person under a public improvement contract.

15 (b) "Person" means a person or persons, mechanic, subcontractor, or  
16 material person who performs labor or provides materials for a public  
17 improvement contract, and any other person who supplies the person with  
18 provisions or supplies for the carrying on of a public improvement  
19 contract.

20 (c) "Public body" means the state, or a county, city, town,  
21 district, board, or other public body.

22 (d) "Public improvement contract" means a contract for public  
23 improvements or work, other than for professional services, or a work  
24 order as defined in RCW 39.10.020.

25 **Sec. 7.** RCW 39.10.902 and 2002 c 46 s 4 are each amended to read  
26 as follows:

27 The following acts or parts of acts, as now existing or hereafter  
28 amended, are each repealed, effective July 1, 2007:

29 (1) RCW 39.10.010 and 1994 c 132 s 1;

30 (2) RCW 39.10.020 and 2003 c ... s 2 (section 2 of this act), 2001  
31 c 328 s 1, 2000 c 209 s 1, 1997 c 376 s 1, & 1994 c 132 s 2;

32 (3) RCW 39.10.030 and 1997 c 376 s 2 & 1994 c 132 s 3;

33 (4) RCW 39.10.040 and 1994 c 132 s 4;

34 (5) RCW 39.10.051 and 2002 c 46 s 1 & 2001 c 328 s 2;

35 (6) RCW 39.10.061 and 2002 c 46 s 2 & 2001 c 328 s 3;

36 (7) RCW 39.10.065 and 1997 c 376 s 5;

- 1 (8) RCW 39.10.067 and 2002 c 46 s 3 & 2000 c 209 s 3;
- 2 (9) RCW 39.10.070 and 1994 c 132 s 7;
- 3 (10) RCW 39.10.080 and 1994 c 132 s 8;
- 4 (11) RCW 39.10.090 and 1994 c 132 s 9;
- 5 (12) RCW 39.10.100 and 1994 c 132 s 10;
- 6 (13) RCW 39.10.115 and 2001 c 328 s 4 & 2000 c 209 s 4;
- 7 (14) RCW 39.10.900 and 1994 c 132 s 13; (~~and~~);
- 8 (15) RCW 39.10.901 and 1994 c 132 s 14; and
- 9 (16) RCW 39.10.-- and 2003 c ... s 1 (section 1 of this act).

10 NEW SECTION. **Sec. 8.** A new section is added to chapter 39.12 RCW  
11 to read as follows:

12 The following acts or parts of acts, as now existing or hereafter  
13 amended, are each repealed, effective July 1, 2007:  
14 RCW 39.12.-- and 2003 c . . . s 5 (section 5 of this act)."

**SHB 1788** - S COMM AMD  
By Committee on Government Operations & Elections

**ADOPTED AS AMENDED 04/16/2003**

15 On page 1, line 1 of the title, after "works;" strike the remainder  
16 of the title and insert "amending RCW 39.10.020, 39.08.030, 39.30.060,  
17 60.28.011, and 39.10.902; adding a new section to chapter 39.10 RCW;  
18 and adding new sections to chapter 39.12 RCW."

--- END ---